

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**UNITED STATES OF AMERICA,**

**Plaintiff/Respondent,**

**v.**

**No. CV 11-0037 MV/LAM  
CR 03-0477 MV**

**ERIC LAMONT JOHNSON,**

**Defendant/Movant.**

**ORDER DENYING MOTION TO APPOINT COUNSEL**

**THIS MATTER** is before the Court on Defendant/Movant's motion to appoint counsel (CV Doc. 3), filed on January 12, 2011. The Court has reviewed the motion and **FINDS** that the motion is not well-taken and should be **DENIED** at this time.

In his motion, Defendant/Movant requests the appointment of counsel in this proceeding; however, there is generally no federal constitutional right to counsel in a proceeding brought under 28 U.S.C. § 2255. *See Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) ("We have never held that prisoners have a constitutional right to counsel when mounting collateral attacks upon their convictions, . . . and we decline to so hold today.") (citation omitted). The decision of whether to appoint counsel is left to the discretion of the Court. Ordinarily, there is no reason to appoint counsel unless the case has reached the stage of proceedings where an evidentiary hearing is required. *See, e.g., United States v. Leopard*, 170 F.3d 1013, 1015 (10th Cir. 1999). As there is no need for an evidentiary hearing in this case at this time, the Court finds that appointment of counsel would be premature. Therefore, the Court will deny Defendant/Movant's motion at this time.

**IT IS THEREFORE ORDERED** that Defendant/Movant's motion to appoint counsel  
(*CV Doc. 3*) is **DENIED without prejudice** at this time.

**IT IS SO ORDERED.**

  
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**LOURDES A. MARTÍNEZ**  
**UNITED STATES MAGISTRATE JUDGE**